TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1957

No. 95

HOOVER MOTOR EXPRESS CO., INC., PETITIONER,

vs.

UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 27, 1957
CERTIORARI GRANTED JUNE 17, 1957

SUPREME COURT OF THE UNITED STATES

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INDEX

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APPENDIX TO APPELLANT'S BRIEF

[fol. 1] In United States District Court For the Middle District of Tennessee, Nashville Division

Civil No. 2013

Hoover Motor Express Company, Inc., Plaintiff,

v.

United States of America, Defendant.

Basis of Action: Sec. 23(a)(1)(A), Internal Revenue Code; Seeking recovery by collecting alleged disallowance in sum of $28,357.02, interest and costs, paid by plaintiff to Defendant for fines imposed for years 1951, 1952 and 1953.

For Plaintiff:

Judson Harwood, 515 Nashville Trust Bldg., Nashville 3, Tennessee.

For Defendant:

Fred Elledge, Jr., U. S. Attorney, 879 U. S. Court house, Nashville 3, Tennessee.

R. B. Ross, Trial Section—Tax Division, U. S. Department of Justice, Washington, D. C.

Docket Entries

1955

Apr. 13—Complaint filed, with five copies.

Apr. 14—Summons returned executed in full and filed. MFE $.....

Apr. 20—Registry U.S. Mail Receipt Card, returned and filed showing service upon the Attorney General, and that he has his copies.

[fol. 2]

June 13—Answer filed by Defendant, two attested copies delivered to the U.S. Attorney and one copy mailed to Plaintiff's Attorney Judson Harwood.

1955

Oct. 11—Memorandum-Opinion entered finding that Plaintiff was entitled to deduct the fines as deductions from gross income for particular years involved, and that such would not frustrate any clearly defined policy of the State Statute. Judgment will be entered in accordance with said Memorandum-Opinion; and either party may submit suggestions for additional findings of fact and conclusions of law. Attested copy delivered to the U.S. Attorney, one copy mailed to plaintiff's attorney Judson Harwood, and one attested copy mailed to the Attorney General.

1956

Feb. 2—Judgment entered in favor of plaintiff over Defendant. Copy mailed to Judson Harwood and three attested copies delivered to the U.S. Attorney.

Feb. 2—Notice of Appeal filed by Plaintiff.

Feb. 28—Appeal Bond Filed.

[fol. 3] IN UNITED STATES DISTRICT COURT

COMPLAINT—Filed April 13, 1955

MAY IT PLEASE THE COURT:

I.

The plaintiff is a Tennessee Corporation with principal offices in Nashville, Davidson County, Tennessee and is engaged in business as a common carrier of freight by motor vehicle.

II.

This is a suit for the recovery of corporate income taxes erroneously assessed against and collected from the plaintiff for the calendar years 1951, 1952 and 1953.

III.

This Court is given jurisdiction of this cause of action by Section 1346, Title 28, U.S.C.A.

IV.

A representative of the Bureau of Internal Revenue, in auditing the income tax returns of plaintiff for the calendar years 1951, 1952 and 1953, made several adjustments but the adjustments herein complained of involve a disallowance, as an ordinary business expense, of fines paid by the plaintiff, which fines were imposed by various states through which plaintiff operates. The fines involved were imposed against plaintiff because plaintiff's vehicles, in some way, were in violation of the weight limitation laws of the various states. Many of these fines involved vehicles which were well within the gross weight limitation imposed by the various states, but at the time said vehicles reached a weighing station, one or more axles of said vehicles were carrying weight in excess of the per axle limitation imposed by the various states. This situation usually resulted from the shifting of the freight within the vehicle after said vehicle was loaded, said shifting resulting usually from the braking actions or starts involved in [fol. 4] operating said vehicles. In these instances the total freight on plaintiff's vehicle did not exceed the permissible freight that said vehicle could lawfully haul, but due to its actual location within the vehicle, an excessive portion of the weight was imposed upon one particular axle. This type of violation was responsible for a vast majority of all such fines.

V.

The remaining fines involved were imposed because the entire vehicle of plaintiff, together with the load on said vehicle, was in excess of the maximum total weight permitted by the particular state involved.

VI.

Plaintiff, by virtue of its Certificates of Public Convenience and Necessity issued to it by the Interstate Commerce Commission, is obligated to and does serve many small communities, cross-road settlements and business concerns located on the open highways, and as a result

thereof, regularly picks up freight from shippers located at such places. In determining the weight of shipments so picked up, the plaintiff, by necessity, relies upon the weight as shown on the bill of lading which is prepared by the shipper and the trucks are loaded with reference to the weight of the various shipments and when the shipments arrive at a major terminal point, the shipments are actually weighed and any correction in the weight of any shipment is made at that time. This practice of plaintiff is the accepted practice among motor carriers generally. The weight of such shipments is frequently in excess of the weight as reflected by the bill of lading which was prepared by the shipper and the loading of the trucks occasionally results in the vehicle actually carrying more weight than the plaintiff knew was on the vehicle. When trucks are loaded in reliance upon the weight of the shipments as represented by the shipper and the represented weights are erroneous, the truck will naturally be overweight until it arrives at a major terminal. In the meanwhile, if it has passed a weigh-[fol. 5] ing station, the violation has been noted and a fine imposed.

The plaintiff, of course, knows the gross weight of its empty vehicles and can compute the maximum permissible pay load that the vehicles can carry and plaintiff did not at the time here involved, and does not now, knowingly permit any vehicles to operate over the highways with a load in excess of the permissible load as reflected by the statutes of the states through which the vehicles must pass. It is true, however, that on occasions a vehicle will exceed the gross maximum permissible weight, but plaintiff avers that this not only is not wilful but cannot be avoided even by the exercise of ordinary precautions. Plaintiff as well as all motor carriers naturally endeavor to load their trucks as near to the maximum permissible pay loads as possible in order to produce the greatest revenue, and if plaintiff should change or alter this general practice so as to avoid any possibility of an occasional overweight vehicle, it could not operate profitably and, of course, the defendant would collect no tax from plaintiff.

Plaintiff further avers that it operates in the states of Georgia, Alabama, Mississippi, Tennessee, Kentucky, Ohio, Indiana, Illinois and Missouri and the maximum permissible weight limit in these various states varies. The most restrictive state in which plaintiff operates is Kentucky, the legal permissible pay load which plaintiff can transport into or through Kentucky being approximately 8,000 to 14,000 lbs. less than is permissible in the other states involved. Since plaintiff's major operation is a north-south operation from Cincinnati, Louisville and St. Louis across the state of Kentucky, unless plaintiff endeavors to load its equipment to the maximum permissible weight according to the laws of Kentucky, it will be impossible for plaintiff to operate successfully.

Plaintiff, therefore, denies that any of the fines involved were the result of wilful violation of the laws of any state [fol. 6] or were the result of its failure to exercise ordinary precaution and that the payment thereof is an ordinary and necessary expense of doing business as a common carrier by motor vehicle.

VII.

Plaintiff further avers that on September 10, 1942, at which time Mr. Guy Helbering was the Commissioner of Internal Revenue, he, as such Commissioner, promulgated a regulation to the effect that overweight fines imposed on truck operators were ordinary and necessary business expense and were deductible as such from gross income for purposes of computing income taxes. This regulation and interpretation remained in full force and effect until November 30, 1950, at which time a new ruling by the Commissioner of Internal Revenue was issued reversing its earlier holding and provided that from and after December 1, 1950, overweight fines paid by trucking companies, such as plaintiff, would no longer be deductible as a business expense. This later ruling reversing the earlier ruling was made by Mr. George J. Schoeneman who was Commissioner of Internal Revenue at that time. From September 10, 1942 to the date of the new regulation there was no change whatever in the language of the applicable statute, which is Section

23 (a)(1)(A) of the Internal Revenue Code and reads as follows:

> "In computing net income there shall be allowed as deductions:
>
> In general. All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. . . ."

The foregoing Section of the Act, in the identical language, was in full force and effect during all three of the years involved in this suit.

Plaintiff, therefore, avers that the original ruling of the Commissioner of Internal Revenue was correct and the fact that Congress did not see fit to change the language of the [fol. 7] Act for a period of more than eight years after the original interpretation was made signifies Congressional approval of said original interpretation, and that the Commissioner of Internal Revenue, by reversing its earlier ruling, has, in effect, endeavored to rewrite the statute, which, of course, he has no right to do.

While the amount of fines paid involved a very substantial sum of money, the plaintiff operates several hundred tractor-trailer trucks, practically all of which are on the highways six days per week throughout the year. The gross receipts of plaintiff from its common carrier operations during each of the three years involved approximated Six Million Dollars.

VIII.

Plaintiff avers that as a result of the disallowance of overweight fines for the three years involved it was required to and did pay additional income tax and excess profit tax, together with interest, as follows:

1951	$12,252.35
1952	9,264.69
1953	6,839.98
Total	$28,357.02

These payments were made on the 29th of October, 1954.

Plaintiff duly filed its claim for refund of the above sums, as required by the statute as a condition precedent to filing this suit, and said claim for refund has now been duly rejected and denied.

Plaintiff therefore sues the defendant for the sum of Twenty-eight Thousand Three Hundred Fifty-seven and 02/100 ($28,357.02) Dollars, plus interest from October 29, 1954.

.....
Attorney for Plaintiff.

[fol. 8] In United States District Court

Answer—Filed June 13, 1955

The defendant, The United States of America, by and through its attorney, Fred Elledge, Jr., United States Attorney for the Middle District of Tennessee, answers plaintiff's complaint as follows:

1.

Admits the allegations contained in paragraph I.

2.

Denies the allegations contained in paragraph II, except admits that this is a suit for refund of 1951, 1952 and 1953 corporate income taxes.

3.

Denies the allegations contained in paragraph III, except admits that this Court's jurisdiction herein is delimited by Section 1346, Title 28, U. S. C.

4.

Denies the allegations contained in paragraph IV, except admits that a Revenue Agent made several adjustments in plaintiff's income tax returns for the taxable years 1951, 1952 and 1953, and that the adjustments complained of herein involve the disallowance, as an ordinary and necessary business expense, of fines paid by plaintiff.

5.

Denies the allegations contained in paragraph V, except admits that this action concerns the deduction from gross income of fines paid by plaintiff for violation of various State laws regulating weight loads of trucking concerns.

6.

Alleges that, at the present time, defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph VI, except that defendant denies that payment of the fines re- [fol. 9] ferred to were an ordinary and necessary expense of doing business within the meaning of the Internal Revenue laws.

7.

Denies the allegations contained in paragraph VII, except admits that on September 10, 1942 the Commissioner of Internal Revenue issued a Special Ruling (see 505, C.C.H., par 6134) pertaining to the deductibility of fines paid by truckers for violation of state weight limitation laws, and that on November 30, 1950 the Commissioner of Internal Revenue revoked said ruling by I.T. 4042 (1951-1 Cum. Bull. 15). It is also admitted that Section 23(a)(1)(A) of the Internal Revenue Code of 1939 was the same in its application throughout the period September 10, 1942 through November 30, 1950, and that for the years 1950 through 1952 Section 23(a)(1)(A) of the Internal Revenue Code of 1939 provided for the deduction of ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business.

8.

Denies the allegations contained in paragraph VIII and also alleges that at the present time defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph VIII with respect to the amount of additional tax paid, which was attributable to the disallowance of the deduction of the

fines levied against plaintiff, since plaintiff's additional payment covers other adjustments also and there has been no apportionment of the amount of the tax attributable to the deduction of the fines. Said additional assessments were satisfied on November 1, 1954 by the payment of $2,556.04 for the year 1951, $7,675.03 for the year 1952, and $77,056.86 for the year 1953, and that plaintiff filed claims for refund on November 22, 1954 for these years and that said claims for refund have not been rejected by the required statutory notice.

[fol. 10] WHEREFORE, defendant, having fully answered plaintiff's complaint, prays that plaintiff take nothing in this suit; that plaintiff's complaint be dismissed; and that defendant be allowed its costs herein.

Fred Elledge, Jr., United States Attorney, Attorney for Defendant.

IN UNITED STATES DISTRICT COURT

MEMORANDUM OPINION—Entered October 11, 1955

The principal issue for decision is whether fines paid by a truck operator for violations of state laws prescribing maximum weight limitations are deductible from gross income as ordinary and necessary business expenses under Section 23 (a) (1) (A) of the Internal Revenue Code which provides as follows:

> "In computing net income there shall be allowed as deductions . . . all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business . . ."

The Commissioner of Internal Revenue, on September 10, 1942, issued a special ruling that such fines were deductible. That ruling remained in effect until it was re-[fol. 11] scinded by a new ruling of the Commissioner issued November 30, 1950. The reasons for revocation of the earlier ruling are set forth in the regulation of November 30, 1950, as follows:

"Reconsideration has been given to the conclusion heretofore reached by the Bureau that fines paid by truck operators for violations of State laws prescribing maximum weights, loads, and sizes of vehicles are deductible from gross income as ordinary and necessary business expenses under section 23(a)(1)(A) of the Internal Revenue Code.

"That conclusion was based upon the understanding that the fines in question were paid in lieu of fees which would have been payable for permits to operate overloaded or overlength vehicles, and that such permits were generally granted by State highway authorities. The fines were, therefore, regarded as more in the nature of tolls than penalties.

"Upon reconsideration of the question involved it appears that the premise on which the Bureau's conclusion was based was erroneous. It is therefore held that fines paid by truck operators for violations of State laws prescribing maximum weights, loads, and sizes of vehicles are penalties which are not deductible as ordinary and necessary business expenses under section 23(a)(1)(A) of the Internal Revenue Code. (See Burroughs Building Material Co. v. Commissioner, 47 Fed. (2d) 178, Ct. D. 297, C. B. X-1, 397 (1931), and G. C. M. 11358, C. B. XII-1, 29 (1933).)"

Plaintiff is a common carrier of freight by motor vehicle operating in the states of Georgia, Alabama, Mississippi, Tennessee, Kentucky, Ohio, Indiana, Illinois, and Missouri, all of which have truck weight limitation laws which are similar in general character although they vary with respect to details and with respect to the maximum weight limita- [fol. 12] tions imposed. For the years 1951 through 1953, plaintiff paid various fines imposed upon it because of its violations of such laws, and in its income tax returns for those years, deducted the amounts of the fines from gross income as ordinary and necessary business expenses under the provisions of Section 23(a)(1)(A) of the Internal Revenue Code. Its returns for those years, having been audited and the deductions disallowed by the Commissioner consistently with his ruling of November 30, 1950, the plaintiff

paid the resulting additional income and excess profits taxes for the years involved and instituted the present action for their recovery.

The theory of the plaintiff is that the weight laws of the states in which it operates are so restrictive in character and have such variations in permissible weight limitations that it is practically impossible to operate the plaintiff's motor carrier business without incurring the penalties imposed, notwithstanding good faith efforts upon its part to comply with the weight regulations. It is insisted that the plaintiff has carried the burden of proof to show that its violation of the weight laws were neither wilful nor negligent and that the fines were incurred despite all reasonable efforts and precautions on its part to comply. On the basis of this reasoning, it is insisted that the question is controlled by such cases as Jerry Rossman Corporation v. Commissioner, (2 Cir.) 175 F. 2d 711; National Brass Works v. Commissioner, 9 Cir., 182 F. 2d 526; and Commissioner v. Pacific Mills, 1 Cir., 207 F. 2d 177, in which it was ruled that overcharges under the Emergency Price Control Act of 1942 which were neither wilful nor the result of failure to take practicable precautions were deductible as ordinary and necessary business expenses within the meaning of the Internal Revenue Code.

The defendant denies that the plaintiff has carried the burden of showing that its violations were neither wilful nor the result of failure to exercise due care or to take [fol. 13] proper precautions, and insists, in any event, that the exactions under the weight limitation laws which the plaintiff was required to pay, constituted "penalties", or were punitive in nature, and that to allow them as deductions would frustrate the clearly defined policy of state laws within the doctrine of Great Northern Ry. Co. v. Commissioner, 8 Cir., 40 F. 2d 372, Chicago R. I. & P. Ry. Co. v. Commissioner, 7 Cir., 47 F. 2d 990, Burroughs Bldg. Material Co. v. Commissioner, 2 Cir., 47 F. 2d 178, Commissioner v. Longhorn Portland Cement Co., 5 Cir., 148 F. 2d 276, and other decisions of like import.

It appears that the fines paid by the plaintiff for the taxable years resulted in large measure, probably in the vast majority of instances, because one or more axles of the vehicle involved carried weight in excess of the per axle

limitation imposed by the various states, although in these instances the vehicle with its load of freight was within the overall weight limitations. The proof shows that such violations usually occurred because of a shifting of the freight within the vehicle during transit.

In other instances, the proof suggests that violations occurred when the plaintiff picked up freight in small communities or from business concerns located on the open highways and loaded its vehicles in reliance upon the weight of the load as shown on the bill of lading which was prepared by the shipper, there being no opportunity to weigh the shipments until they arrived at a major terminal point. In still other cases, the violations resulted when it became necessary for the plaintiff to substitute a tractor of heavier weight after a breakdown enroute because a tractor of similar weight was not at that time available. The plaintiff also introduced evidence to the effect that other freight haulers regularly pay fines under the weight limitation laws, and it is argued from the entire record that the situation is such that the plaintiff's business can not be operated on a practical basis without necessarily incurring the fines and penalties imposed by the law.

[fol. 14] On the other hand, it is argued for the defendant that many other transportation companies are able to operate within the weight limitations, and it is insisted that by reasonable efforts the plaintiff would find no difficulty in avoiding violations, for example, by improving its methods of loading and packing the freight within the vehicle to avoid shifting in transit, by closer supervision of its operations, and by more careful inspection and adjustment of its weighing facilities.

In the view which the Court takes of the case, it is not necessary to determine whether the plaintiff did all which should reasonably be required of it as a prudent operator to comply with the weight limitations involved. Assuming that it took every precaution that could fairly be demanded consistent with a practical operation of its business, and assuming further that it did not act with wilful intent, the Court is of the opinion that to allow the claimed deductions from gross income for the taxable years would nevertheless

frustrate the clearly defined policies of the applicable state weight limitation laws.

There can be no doubt that the underlying policy of the laws under which the fines were paid is not only to protect the highways of the state but also to protect the persons using them. Violations of the statutes are punishable by the imposition of a fine which is penal in character. No distinction is made in the statutes between an innocent or non-negligent violation, on the one hand, and one which is either wilful or due to a negligent failure to take adequate precautions, on the other hand. It was evidently considered that the purposes of the statutes could be accomplished more effectively by treating all violators alike. This thought is borne out by the provisions commonly found in statutes of this character that the Commissioner of Highways, or other proper authority, shall have discretionary power to grant special permits for freight movements in excess of the prescribed weight limitations, the inference [fol. 15] being that, in the absence of such special permit, neither hardship nor good faith shall constitute a defense to a violation.

There are a number of cases holding that statutory penalties are not deductible from gross income as ordinary business expenses. The reason for this doctrine was succinctly stated in Commissioner of Internal Revenue v. Longhorn Portland Cement Co., 5 Cir., 148 F. 2d 276, 277, in which deductibility was denied of sums paid by the taxpayer in satisfaction of statutory penalties incurred for violations of state antitrust laws:

> " * * * that the penalty is a punishment inflicted by the state upon those who commit acts violative of the fixed public policy of the sovereign, wherefore to permit the violator to gain a tax advantage through deducting the amount of the penalty as a business expense, and thus to mitigate the degree of his punishment, would frustrate the purpose and effectiveness of that public policy."

Upon like reasoning deductions have been denied for fines and costs paid for violations of state laws relating to price

fixing, Burroughs Bldg. Material Co. v. Commissioner, supra; and for sums paid by railroads for violations of the federal safety appliance laws. Chicago R. I. & P. Ry. Co. v. Commissioner, supra; and Great Northern Ry. Co. v. Commissioner, supra.

But the soundness of the rule which would deny deductibility to all statutory penalties, or which would make the punitive character of the exaction an inflexible criterion, has been seriously questioned in later cases, particularly the case of Jerry Rossman Corp. v. Commissioner, supra. In that case Judge Hand pointed out that "there are 'penalties' and 'penalties' ", and ruled that the real test in the case of a penalty, as in the case of any other exaction, is whether its allowance as a deduction would frustrate the sharply defined policy of the statute, the question being decided in [fol. 16] every case ad hoc. Applying this rule, the court found, as other courts have done in similar cases, that the allowance as a deduction of an innocent and non-negligent overcharge under the Emergency Price Control Act of 1942 did not frustrate the policy of that particular Act.

It is significant to note that Judge Hand held in the Rossman case that the overcharge under the Emergency Price Control Act was not a penalty, although he went further and ruled hypothetically that if it should be regarded as penal in nature, its allowance as a deduction did not frustrate the policy of the Act. It is clear from the opinion in the case that this result was reached because the court found that the Administrator, in applying the Act, had adopted the policy of making a distinction between innocent violators and those who had violated the Act because of wilfulness or a failure to take practicable precautions. Accordingly, the court found that where the Administrator had accepted the overcharge as sufficient without requiring the payment of treble damages, such acceptance was evidence of the fact that he regarded the overcharge as having been made innocently, with the result that no policy of the Act was frustrated.

The policy which had been pursued by the Administrator was incorporated into the Act itself by the 1944 amendment of Section 205 (e), and the other OPA cases, subsequent to the Rossman case, were decided on the basis of the amend-

ment. Thus, in the case of Commissioner v. Pacific Mills, supra, the question before the court was whether a payment to the Office of Price Administration in settlement of claims for overcharges was deductible as an ordinary and necessary business expense under Section 23 (a)(1)(A) of the Internal Revenue Code. In holding that the overcharge was deductible, the court found that its allowance as a deduction would not frustrate the Act. The reasoning of the court is clearly indicated by the following excerpt from its opinion: [207 F. 2d 177, 182]:

> [fol. 17] "It is clearly evident from the wording of the amended statute itself, as well as from the legislative history of the amendatory act, that the fundamental policy of the act as amended was to draw a sharp line of distinction between innocent violators on the one hand, and those who had either violated the act wilfully, or else had failed to take practicable precautions to comply, on the other. To this end violators were subjected by Sec. 205(e) of the amended act to payment of no more than their overcharges for the preceding year, or $25, whichever was greater, when they were able to prove that their violation was neither wilful nor the result of their failure to take practicable precautions against the occurrence of their violation. But violators who could not prove both their lack of wilfulness and that they had taken practicable precautions to comply were subjected in the court's discretion to the payment of up to three times the amount of their overcharges for the preceding year or else to not less than $25 nor more than $50, whichever sum should be the greater. Payment in either event was to be to the purchaser provided he sued within the time limited therefor in the act, unless he purchased the commodity involved for use or consumption in his trade or business, for in that event, presumably, the first buyer had passed the overcharge on to those who had in turn purchased from him and it would be inequitable for him to recover and impractical to find those who had actually suffered from the overcharge. But, to prevent a violator in either category from wholly escaping the con

sequences of his violation, the section provided for payment to the Administrator whenever a purchaser for any reason was not entitled to sue. From these provisions it seems clear that the policy of the statute was not to punish violators who could prove that their violation was neither wilful nor the result of failure to take [fol. 18] practicable precautions, but only to make them give up the proceeds of their violation, either as restitution to the buyer or, to prevent the violator's unjust enrichment, to the Administrator. But, as to violators who were unable to prove that their violation was neither wilful nor the result of failure to take practicable precautions it was the policy of the statute to require payment not only of the amount of the recoverable overcharges, but up to three times that amount in the discretion of the court. Thus, assuming that to allow a violator who was unable to prove that his violation was neither wilful nor the result of his failure to take practicable precautions, (one whom we may call for convenience a culpable violator) to deduct a payment such as the one under consideration would indeed frustrate the clearly defined policy of the act. National Brass Works v. Commissioner, 9 Cir., 1953, 205 F. 2d 104, the question arises as to whether Pacific Mills was such a violator or not, for if it was not, no statutory policy would be violated by permitting it to deduct its payment to the Administrator. Jerry Rossman Corp. v. Commissioner, 2 Cir., 1949, 175 F. 2d 711; National Brass Works v. Commissioner, 9 Cir., 1950, 182 F. 2d 526; Hershey Creamery Co. v. United States, 1952, 101 F. Supp. 877, 122 Ct. Cl. 423."

Accordingly, in the OPA cases there was statutory authority for a distinction between innocent and wilful violators, and since the Act itself made the distinction, it was possible to find that the allowance of an innocent and non-negligent overcharge as a deduction would not in any way impair or frustrate the policy of the Act. But the policy of the state weight limitation laws under consideration is to place all violators on the same basis without recognition of degrees or character of guilt. This being true, it would

clearly frustrate the policy of the statutes if the distinction should be made by a court in applying the provisions of Section 23 (a) (1) (A) of the Internal Revenue Code. To [fol. 19] the extent that the deductions should be allowed because of innocence or due care the taxpayer would be relieved of the consequences of his violation, although the state law itself made no such distinction.

The plaintiff also questions the disallowance by the Commissioner of sums paid by the plaintiff for the taxable years on account of fines for traffic violations, but the Court is of the opinion that plaintiff has failed to carry the burden of proof to show that the allowance of these sums would not frustrate the policy of state or municipal laws. The proof does not clearly show the character of the particular laws involved or the circumstances under which the fines were levied and paid.

Another item involves fines paid under a Kentucky statute which required that motor vehicles be equipped with certain mechanical signal devices to give warning when the vehicle was to make a turn. It is shown that the statute was later construed as not requiring the mechanical device if the truck driver gave a hand signal of his intention to make a turn; and it is a fair conclusion from the record that the fines were levied not because of failure to give a signal at any particular intersection or at any particular time, but rather on account of the failure of the vehicle to have the necessary equipment. This being true, the Court feels that the allowance of these fines as deductions would not frustrate any clearly defined policy of the state statute and consequently that the plaintiff was entitled to deduct them from gross income for the particular years involved.

A judgment will be submitted in conformity with this memorandum and either party may, if desired, submit suggestions for additional findings of fact or conclusions of law.

WM. E. MULLER, Judge.

[fol. 20] IN UNITED STATES DISTRICT COURT

JUDGMENT—Entered February 2, 1956

This cause, having been heard by the Court on September 23, 1955, and in accordance with the memorandum of the Court, it is,

ORDERED, ADJUDGED AND DECREED that judgment be and is hereby entered in favor of plaintiff, Hoover Motor Express Co., Inc., and against the defendant, United States of America, in respect to the taxable year 1951, in the amount of $710.39, and with respect to the taxable year 1952, in the amount of $55.56, together with interest thereon in respect to both years, as provided by law, from November 1, 1954, but recovery of the remaining portion of plaintiff's suit is hereby denied.

The parties herein shall bear their respective costs.

Dated this 2nd day of February, 1956.

/s/ WM. E. MILLER, Judge, United States District Court.

Attest: A True Copy, U. S. District Court, Middle District of Tennessee, By GUY W. COOPER, D. C.

Approved for Entry: L. B. ORMES, Clerk, /s/ JUDSON HARWOOD, Attorney for Plaintiff, /s/ FRED ELLEDGE, JR., Attorney for Defendant.

[fol. 32] MINUTE ENTRY OF ARGUMENT AND SUBMISSION—December 13, 1956 (omitted in printing)

IN UNITED STATES COURT OF APPEALS

JUDGMENT—January 4, 1957

The issue in this case is whether fines paid by a truck operator for violation of state laws prescribing weight limitations are deductible from gross income as ordinary

of the Internal Revenue Code of 1939, which provides that, in computing net income, there shall be allowed as deductions all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. The district court held that such fines were not deductible under the above-mentioned section of the statute. The taxpayer challenged the decision of the district court on the ground that none of the violations for which the penalties were imposed were wilful; and that it had [fol. 33] taken all practicable precautions to avoid such violation. Deductions allowed by the statute are matters of legislative grace; and the burden is on the taxpayer to show his claim is within its provisions. *United States v. Olympic Radio and Television*, 349 U.S. 232. The Bureau of Internal Revenue and the courts have, from time to time, narrowed the generally accepted meaning of the language used in Sec. 23(a) in order that tax deduction consequences might not frustrate sharply defined national or state policies prescribing particular types of conduct. Where a taxpayer has violated a federal or a state statute and incurred a fine or penalty, he has not been permitted a tax deduction for its payment. *Commissioner v. Heininger*, 320 U.S. 467, 473.

The trial court in the instant case held that the underlying policy of the laws under which the fines were paid was not only to protect the highways of the state but also to protect the persons using them. The trial court further declared that assuming the taxpayer took every precaution that could fairly be demanded consistent with a practical operation of its business, and that it did not act with wilful intent, nevertheless, the allowance of the claimed deductions would frustrate the clearly defined policies of the applicable state weight limitation laws. The claimed deductions were, therefore, disallowed. With these views, we concur.

The judgment of the district court is accordingly affirmed upon the opinion of Judge Miller, 135 Fed. Supp. 818.

[fol. 34] Clerk's Certificate to Foregoing Transcript
(omitted in printing)

[fol. 35] Supreme Court of the United States

No. 862, October Term, 1956

(Title omitted)

Order Allowing Certiorari—June 17, 1957

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted. The case is consolidated with No. 932 and a total of two hours allowed for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.